

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 27 September 2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Whatcom Land Trust, NWS-2007-1563-NO
Form 1 of 2 - Colony Creek and Wetlands D

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Skagit City: Blanchard
Center coordinates of site (lat/long in degree decimal format): Lat. 48° 34' 35.39" **N**, Long. 121° 22' 51.23" **W**.
Universal Transverse Mercator: Zone 10 N 5380563.67 E 545665.22

Name of nearest waterbody: Colony Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Strait of Georgia

Name of watershed or Hydrologic Unit Code (HUC): Strait of Georgia, 17110002

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: 27 September 2007

☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☒ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

See Form 2 for wetlands adjacent to RPW

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 1,300 linear feet: 16 width (ft) or 0.47 acres.

Wetlands: 0.02 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 129' NGVD.

2. Non-regulated waters/wetlands (check if applicable):³

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Identify TNW:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. **If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.**

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: 2,301 **acres**

Drainage area: 2,056 **acres**

Average annual rainfall: 36 inches

Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

☒ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **2-5** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁴: **Waters flow east to west for 2.2 miles before converging with Harrison Creek, then flows 0.3 miles before entering Samish Bay.**

Tributary stream order, if known: **2nd**.

(b) **General Tributary Characteristics (check all that apply):**

Tributary is: ☒ Natural

☐ Artificial (man-made). Explain:

☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 14 feet

Average depth: 2 feet

Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

☐ Silts

☒ Sands

☐ Concrete

☒ Cobbles

☒ Gravel

☐ Muck

☐ Bedrock

☐ Vegetation. Type/% cover:

☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable banks over most of reach. Slope failure at project site resulting in high sediment inputs.

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 2.25 %

(c) **Flow:**

Tributary provides for: perennial flow

Estimate average number of flow events in review area/year: continuous

Describe flow regime: **Persistent flow throughout year with peak flows from mid-November to mid-March.**

Other information on duration and volume:

Surface flow is: **Discrete and confined**. Characteristics:

⁴ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

☒ Bed and banks

☒ OHWM⁵ (check all indicators that apply):

☒ clear, natural line impressed on the bank

☐ changes in the character of soil

☒ shelving

☒ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☐ sediment deposition

☐ water staining

☐ other (list):

☐ the presence of litter and debris

☒ destruction of terrestrial vegetation

☐ the presence of wrack line

☒ sediment sorting

☐ scour

☒ multiple observed or predicted flow events

☐ abrupt change in plant community

☐ Discontinuous OHWM.⁶ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:

☐ oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore)

☐ physical markings/characteristics

☐ tidal gauges

☐ other (list):

☐ Mean High Water Mark indicated by:

☐ survey to available datum;

☐ physical markings;

☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water is clear and water quality is good. Tributary conveys water from natural sources and runoff from agricultural/residential lands and roads.

Identify specific pollutants, if known: fecal coliform.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): Corridor limited by steep slopes in project vicinity; primarily tree and shrub cover.

☐ Wetland fringe. Characteristics: .

☒ Habitat for:

☒ Federally Listed species. Explain findings: Puget Sound steelhead identified as using stream for spawning and rearing; Puget Sound chinook use downstream reach of stream for rearing..

☐ Fish/spawn areas. Explain findings: Subject reach and upstream areas have riffle/pool complexes used by spawning salmonids. Tributary contains Essential Fisheries Habitat (Magnuson-Stevens Fishery Conservation and Management Act designation) for coho salmon

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: Diversity of aquatic species in Tributary rated moderate to high by WA Department of Fish & Wildlife.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: . acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

⁵A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁶Ibid.

- ☐ Directly abutting
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain: .
☐ Ecological connection. Explain: .
☐ Separated by berm/barrier. Explain: .

- (d) Proximity (Relationship) to TNW
 Project wetlands are **Pick List** river miles from TNW.
 Project waters are **Pick List** aerial (straight) miles from TNW.
 Flow is from: **Pick List**.
 Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
 Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
☐ Vegetation type/percent cover. Explain: .
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**
 Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
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Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

- 1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- ☒ Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: **Colony Creek flows directly into Samish Bay, a tidal waterbody used for interstate and foreign commerce.**

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☒ Tributary waters: **1,300** linear feet **16** width (ft) or **0.47** acres
- ☐ Other non-wetland waters: _____ acres.
- Identify type(s) of waters: _____.

3. **Non-RPWs⁷ that flow directly or indirectly into TNWs.**

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: _____ linear feet _____ width (ft).
- ☐ Other non-wetland waters: _____ acres.
- Identify type(s) of waters: _____.

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The document titled “Wetland Report, Landslide Stabilization Project, Colony Creek MP 29.2, Skagit County, Washington,” identifies the boundary of Wetland D as extending to the edge of the OHW of Colony Creek with no intervening uplands, berms, etc..**
- ☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: **0.02 acre.**

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: _____ acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: _____ acres.

7. **Impoundments of jurisdictional waters.⁸**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):⁹**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: _____.

⁷See Footnote # 3.

⁸To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

⁹Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .

☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource: .

☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).

☐ Lakes/ponds: acres.

☐ Other non-wetland waters: acres. List type of aquatic resource: .

☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: project drawings, wetland delineation, and mitigation plan.

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☒ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps: .

☐ Corps navigable waters' study: .

☐ U.S. Geological Survey Hydrologic Atlas: .

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5min, Bow Quad.

☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .

☐ National wetlands inventory map(s). Cite name: .

☒ State/Local wetland inventory map(s): WA Dept. of Ecology, 2001.

☐ FEMA/FIRM maps: .

☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): WA Dept of Ecology, 2005.

or ☐ Other (Name & Date): .

☐ Previous determination(s). File no. and date of response letter: .

☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .

☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 20, 2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Olympic Pipeline Company, NWS-2007-1774-NO
Form 2 of 2 - Wetlands A, B, C, E, & F

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Skagit City: Blanchard
Center coordinates of site (lat/long in degree decimal format): Lat. 48° 34' 35.39" N, Long. 121° 22' 51.23" W.
Universal Transverse Mercator: Zone 10 N 5380563.67 E 545665.22

Name of nearest waterbody: Colony Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Samish Bay

Name of watershed or Hydrologic Unit Code (HUC): Strait of Georgia, 17110002

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: 31 October 2007

☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☒ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

NOTE: See Form 1 of 2 for wetlands abutting an RPW (Wetland D)

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 1,300 linear feet: 16 width (ft) or 0.47 acres.

Wetlands: 0.51 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): 129' NGVD.

2. Non-regulated waters/wetlands (check if applicable):³

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Identify TNW:

Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": .

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. **If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.**

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 2,301 **acres**

Drainage area: 2,056 **acres**

Average annual rainfall: 36 inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☒ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **2-5** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: **Colony Creek flow east to west for 2.2 miles before converging with Harrison Creek, then flows 0.3 miles before entering Samish Bay, a Traditional Navigable Water.**

Tributary stream order, if known: **3rd**.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural

☐ Artificial (man-made). Explain: .

☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: 14 feet

Average depth: 2 feet

Average side slopes: **3:1** .

Primary tributary substrate composition (check all that apply):

☐ Silts

☒ Sands

☐ Concrete

☒ Cobbles

☒ Gravel

☐ Muck

☐ Bedrock

☐ Vegetation. Type/% cover:

☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable banks over most of reach. Slope failure at project site resulting in high sediment inputs.

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Meandering**

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary gradient (approximate average slope): 2.25 %

(c) Flow:

Tributary provides for: perennial flow

Estimate average number of flow events in review area/year: continuous

Describe flow regime: Persistent flow throughout year with peak flows from mid-November to mid-March.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

☒ Bed and banks

☒ OHWM⁶ (check all indicators that apply):

☒ clear, natural line impressed on the bank

☐ changes in the character of soil

☒ shelving

☒ vegetation matted down, bent, or absent

☐ leaf litter disturbed or washed away

☐ sediment deposition

☐ water staining

☐ other (list):

☐ the presence of litter and debris

☒ destruction of terrestrial vegetation

☐ the presence of wrack line

☒ sediment sorting

☐ scour

☒ multiple observed or predicted flow events

☐ abrupt change in plant community

☐ Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:

☐ oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore)

☐ physical markings/characteristics

☐ tidal gauges

☐ other (list):

☐ Mean High Water Mark indicated by:

☐ survey to available datum;

☐ physical markings;

☐ vegetation lines/changes in vegetation types.

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water is clear and water quality is good. Tributary conveys water from natural sources and runoff from agricultural/residential lands and roads.

Identify specific pollutants, if known: fecal coliform.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

☒ Riparian corridor. Characteristics (type, average width): Corridor limited by steep slopes in project vicinity; primarily tree and shrub cover.

☐ Wetland fringe. Characteristics: .

☒ Habitat for:

☒ Federally Listed species. Explain findings: Puget Sound steelhead identified as using stream for spawning and rearing; Puget Sound chinook use downstream reach of stream for rearing..

☒ Fish/spawn areas. Explain findings: Subject reach and upstream areas have riffle/pool complexes used by spawning salmonids. Tributary contains Essential Fisheries Habitat (Magnuson-Stevens Fishery Conservation and Management Act designation) for coho salmon

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: Diversity of aquatic species in Tributary rated moderate to high by WA Department of Fish & Wildlife.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: Wetland A – 0.17 acres; Wetland B – 0.02 acres; Wetland C – 0.03 acres; Wetland E – 0.07 acres; wetland F – 0.02

Wetland type. Explain: Wetland A – PEM/PFO, slope; Wetland B – RFO, riverine; Wetland C – PFO depressional;

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Wetland E – PEM/PSS, slope; Wetland F – PEM, depressional.

Wetland quality. Explain: Wetland A – Category IV; Wetland B – Category II; Wetland C – Category III; Wetland E – Category III; Wetland F – Category III.

Per Washington State wetland rating System (based on a scale of I to IV, I being the highest functioning)

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Flow from wetlands to Colony Creek during wet season (November-March).

Surface flow is: **Discrete**

Characteristics: Water flows from wetlands to creek via discrete surface water connections

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: wetland A – flow through discrete channels and manipulated drainages (slope drains); Wetland B – connected to creek during high flow events and serves as overflow channel; wetland C – confined overflow into creek; wetland E – flow through discrete channels

☐ Ecological connection. Explain: .

☒ Separated by berm/barrier. Explain: Wetland C – berm along boundary nearest creek appears to be remnant of logging activity.

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **2 - 5-year** floodplain for Wetlands C and D

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water is brown (dry season) with high organic content to clear (wet season). Water quality is generally good. Wetland A receives water from residential properties and pipeline right-of-way; wetlands B and C receive water from forested slopes and pipeline right-of-way. Wetlands E and F receive water from adjacent forested areas. Immediate watershed is moderately developed for agricultural and residential uses with minimal to moderate impacts on natural drainage patterns.

Identify specific pollutants, if known: Fecal coliform.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

☒ Riparian buffer. Characteristics (type, average width): Forested/scrub/shrub, average width is 50 feet on average and confined by ravine.

☒ Vegetation type/percent cover. Explain: scrub-shrub 25%, forested 75%.

☒ Habitat for:

☒ Federally Listed species. Explain findings: Puget Sound steelhead identified as using stream for spawning and rearing; Puget Sound chinook use downstream reach of stream for rearing...

☒ Fish/spawn areas. Explain findings: Subject reach and upstream areas have riffle/pool complexes used by spawning salmonids. Tributary contains Essential Fisheries Habitat (Magnuson-Stevens Fishery Conservation and Management Act designation) for coho salmon

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Diversity of aquatic species in Colony Creek and riparian area rated moderate to high by WA Department of Fish & Wildlife..

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **6**

Approximately 0.97 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Wetland</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
A	N	0.16
B	N	0.02
C	N	0.03
D	Y	0.09
E	N	0.07
F	N	0.02

Summarize overall biological, chemical and physical functions being performed: See section C.

C. SIGNIFICANT NEXUS DETERMINATION

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook.

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly about the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

Subject wetlands have a significant nexus to downstream TNW.

Subject reach includes the portions of Colony Creek 0.40 miles upstream and 2.8 miles downstream to Samish Bay, a Traditional Navigable Water. Watershed has been extensively developed for agricultural and residential uses. Essential Fish Habitat for Pacific salmon (designated under the Magnuson-Stevens Fishery Conservation and Management Act) extends from the TNW (Samish Bay) upstream past the project site to the headwaters of Colony Creek. Fish species listed under the Endangered Species Act utilize the waters of the Samish Bay and Colony Creek; designated critical habitat for chinook salmon and bull trout exists in Samish Bay.

Wetland functions are moderate to high wildlife habitat and habitat diversity, moderate enhanced food web support, moderate floodwater storage/attenuation, and moderate sediment input reduction and toxin removal.

The tributary in combination with its adjacent wetlands provide habitat and lifecycle support functions for fish. The wetlands create and transfer organic carbon which supports the downstream food web of the TNW. Wetlands improve downstream water quality in TNW through sediment and toxin interception. The lengthy vegetated tributary with wetland complexes have the capacity to capture pollutants (agricultural herbicides/pesticides and sediments) to reduce the amount of pollutants, sediments and flood waters from reaching the TNW. Wetlands attenuates downstream flooding by reducing peak flow in the watershed during major storm events and attenuates erosion by detaining high flows during storms and reduce the duration of erosive flows, thus decreasing downstream erosion in streams.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Colony Creek flows directly into Samish Bay, a tidal waterbody used for interstate and foreign commerce. Colony Creek is designated as "perennial" by USGS.
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☒ Tributary waters: **1,300** linear feet 16 width (ft) or 0.47 acres
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

⁸See Footnote # 3.

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:
- ☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area:

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C. The document titled “*Wetland Report, Landslide Stabilization Project, Colony Creek MP 29.2, Skagit County, Washington*,” identifies Wetlands A, B, C, E, and F as being separated from Colony Creek, but connected by discrete surface water features.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.51 acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: .
- ☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
- Identify type(s) of waters: .
- ☐ Wetlands: acres.

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
- ☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- ☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: project drawings, wetland delineation, and mitigation plan.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5min, Bow Quad.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☒ State/Local wetland inventory map(s): WA Dept. of Ecology, 2001.
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): WA Dept of Ecology, 2005.
 or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

1. **Site Description and Significant Resources in the area:** The site is a long narrow corridor (pipeline right-of-way) trending north-south. The site trends from plateaus at the north and south ends down to a steep sloped ravine containing a stream near the middle of the site. Surrounding vicinity has been substantially developed for agricultural and residential uses. The site contains Colony Creek, a tributary of Samish Bay. The site is bounded to the east and west by the Colony Creek riparian corridor at the work site (vicinity of Wetlands A, B, and C) and undeveloped land and pastures to the north of the work site (vicinity of Wetland E and F). Wetlands in question are scattered along the right-of-way.
2. **Project Purpose and Description:** Temporary and permanent fill associated with bank and slope stabilization actions.
3. **Physical / Chemical Characteristics:**
 - a. Streamflow c.f.s.: 2.25cfs (annual base flow average)
 - b. Salinity: NA
 - c. Soils: Hoogdal silt loam -30-60% slopes in creek ravine (non-hydric).
 VanZandt gravelly loam 0-15% slope at top of ravine (non-hydric)
 Wetlands - 5YR 4/1 silt loam (Wetland A, C)
 2.5YR 4/1 gravelly loam (Wetland B, E)
 Uplands - 7.5YR 3/2 silt loam
 - d. Hydrology: Saturation at shallow depth to inundation.
4. **Biological Characteristics:**
 - a. Percentage of dominant vegetation FAC or wetter: 95% in wetlands
 - b. Vegetation species list:
Wetlands A, E, F
 Reed canarygrass (*Phalaris arundinacea*), FACW
 Slough sedge (*Carex obnupta*), OBL
 Soft rush (*Juncus effusus*), FACW+
 Creeping buttercup (*Ranunculus repens*), FACW

Wetland B, C

Red alder (*Alnus rubra*), FAC
Black cottonwood (*Populus balsamifera*), FAC
Large leaf avens (*Geum macrophyllum*), FACW-
Piggy back plant (*Tolmiea menziesii*), FAC
Salmonberry (*Rubus spectabilis*), FAC+

Uplands

Western red cedar (*Thuja plicata*), FAC
Western hemlock (*Tsuga heterophylla*), FACU
Red alder (*Alnus rubra*), FAC
Douglas fir (*Pseudotsuga menziesii*), FACU
Sword fern (*Polystichum munitum*), FACU
Stinging nettle (*Urtica dioica*), FAC+
Salmonberry (*Rubus spectabilis*), FAC+

- c. Fauna:
- d. NWI Classification, associations/communities: PEM/PFO

5. Lateral Extent of Jurisdiction:

- a. OHW, MHHW, MHW and datum: 129' NGVD
- b. Acreage of wetlands to be impacted: Approximately 0.28 acres
- c. Total acreage of wetlands/waters on site: 1+ acres of wetlands (some continue offsite)

Additional information: No site visit was conducted. The consultant identified one stream and seven wetland areas within 300 feet of the proposed project.

The site contains Colony Creek, a perennial stream that is tributary to Samish Bay

Wetland A is situated in the south end of the project corridor and approximately 125 feet south of Colony Creek. Topography in the wetland slopes steeply to the north toward the creek. The wetland is routinely mowed for maintenance of the pipeline right-of-way. A series of corrugated half-round pipes and diversion berms divert water away from the wetland and toward the creek.

Wetland B is situated on the north side of Colony Creek approximately 150 feet east of the pipeline ROW and 100 feet northeast of the creek. The wetland has formed in a linear depressional feature that suggests that the wetland may serve, or once served, as a side channel during flood events.

Wetland C is situated on the north side of Colony Creek approximately 40 feet east of the ROW and 75 feet northeast of the creek. This wetland is located at the toe of the slope and is confined in a depressional area that appears to be a relic anthropogenic feature from past logging activities. The wetland may receive streamflow during flood events; flow out of the wetland is limited by a berm on the down gradient side of the wetland.

Wetland D is situated immediately north of Colony Creek within the ROW. The upstream end of the wetland is fed by a spring at the base of the slope and the downstream end is contiguous to the stream channel.

Wetland E and F are situated to the north of Colony Creek at the plateau on top of the slope. Wetland E is approximately 500 feet from Colony Creek; wetland F is approximately 850 feet from the creek. These wetlands are part of a larger wetland system that extends west from the project site. Boundaries for the off-site areas of the wetland and off-site connections to Colony Creek were not documented by the consultant due to restricted access on adjacent properties. Review of aerials (normal and infra-red), Skagit County Critical Area Ordinance information, and topographic maps indicates that the off-site wetland complex extends west, then southward into the Colony Creek riparian zone (ravine).

Wetland G is situated at the north end of the project corridor and extends offsite to the west. No determination is being made for this wetland – it will not be affected by proposed project.

Conclusions: Wetlands A, B, C, E, and F are considered adjacent, per the definition found at 33 CFR 328.2(c), to discrete surface water features that appear to flow into Colony Creek, which flows into Samish Bay, a tidally influenced navigable waterway used for interstate and foreign commerce. These wetlands appear to have a significant nexus to downstream traditional navigable waters of the U. S. and appear to be jurisdictional waters of the U. S.

- 8. **Attachment:** Jurisdictional map, other: Wetland boundary map, aerial photos, WA state wetland inventory, topographic map.

Randel Perry
Project Manager

Date

Matt Bennett
Senior Scientist

Date